

Easterling, Deborah


28020
2018-364 w/s

From: Elizabeth Todd <elizabeth.todd@nelsonmullins.com>
Sent: Friday, November 16, 2018 4:42 PM
To: PSC_Contact
Subject: On Behalf of Jack Smith - Complaint Form for 46 & 36 Driftwood Cottage Lane (Halwig and Noller Residences)
Attachments: LTRT Chad Campbell with Complaint- Halwig_Noller_DIUC.PDF

To Whom it may concern:

Please find a copy of the attached letter and Complaint regarding the Halwig and Noller residences.

Best,

 **NELSON MULLINS**
Jack Smith
jack.smith@nelsonmullins.com | 843.534.4309
151 Meeting Street Suite 600 | Charleston SC 29401

On behalf of Jack Smith,



ELIZABETH TODD
ADMINISTRATIVE ASSISTANT TO PART DANIEL
elizabeth.todd@nelsonmullins.com
LIBERTY CENTER | SUITE 600
151 MEETING STREET | CHARLESTON, SC 29401
T 843.534.4802 F 843.722.8700
NELSONMULLINS.COM

Confidentiality Notice

This message is intended exclusively for the individual or entity to which it is addressed. This communication may contain information that is proprietary, privileged, confidential or otherwise legally exempt from disclosure. If you are not the named addressee, you are not authorized to read, print, retain, copy or disseminate this message or any part of it. If you have received this message in error, please notify the sender immediately either by phone (800-237-2000) or reply to this e-mail and delete all copies of this message.



Newman Jackson Smith
T 843.534.4309 F 843.534.4350
jack.smlth@nelsonmullins.com

NELSON MULLINS RILEY & SCARBOROUGH LLP
ATTORNEYS AND COUNSELORS AT LAW

151 Meeting Street | Sixth Floor
Charleston, SC 29401-2239
T 843.853.5200 F 843.722.8700
nelsonmullins.com

November 16, 2018

Via Electronic and US Mail

Mr. Chad Campbell
Office of Regulatory Staff
Supervisor, Consumer Services
1401 Main Street, Suite 900
Columbia, South Carolina 29201

RE: Daufuskie Island Utility Company, Inc.
Michael and Nancy Halwig
NMRS File No.: 54041/09000
Stephan and Beverly Noller
NMRS File No.: 055561/09000

Dear Chad:

I am providing you a copy of the Complaint and Information being filed by email at contact@psc.sc.gov today. The Complaint involves the matters we have discussed over several months regarding the Daufuskie Island Utility Company and its refusal to restore service and replace the mains for water and sewer service to all of the lots along Driftwood Cottage Lane above an area of that road that was washed away during Hurricane Matthew over two years ago. The facts and information in the Complaint speak for themselves, but please let me know if you have any questions or would like to discuss this Complaint.

By copy to Thomas Gressette, Esquire we are providing a courtesy copy to the Daufuskie Island Utility Company as well.

With best regards, I am

Very truly yours,

Newman Jackson Smith

NJS:et

cc: Thomas P. Gressette, Jr., Esquire (w/encl.)

Complete Form, Print, Sign and Mail to:
Public Service Commission of South Carolina
101 Executive Center Dr., Suite 100
Columbia, SC 29210



Phone: 803-896-51
Fax: 803-896-51
www.psc.sc.gov
Text PSCAGENDAS to 394

To receive an alert when Meeting Agendas are released

Individual Complaint Form

Date*: 11/16/2018

Complainant or Legal Representative Information:

* Required Fields

Name * Newman J. Smith

Firm (if applicable) Nelson Mullins Riley & Scarborough LLP

Mailing Address * 151 Meeting Street/PO Box 1806

City, State Zip * Charleston SC 29401

Phone * 843-534-4309

E-mail jack.smith@nelsonmullins.com

Name of Utility Involved in Complaint: * Daufuskie Island Utility Company

Type of Complaint (check appropriate box below.) *

- | | | | |
|--|--|--|--|
| <input type="checkbox"/> Billing Error/Adjustments | <input type="checkbox"/> Deposits and Credit Establishment | <input type="checkbox"/> Wrong Rate | <input checked="" type="checkbox"/> Refusal to Connect Service |
| <input type="checkbox"/> Disconnection of Service | <input type="checkbox"/> Payment Arrangements | <input type="checkbox"/> Water Quality | <input checked="" type="checkbox"/> Line Extension Issue |
| <input type="checkbox"/> Service Issue | <input type="checkbox"/> Meter Issue | | |
| <input type="checkbox"/> Other (be specific) | | | |

Have you contacted the Office of Regulatory Staff (ORS)? * ☒ Yes ☐ No

Name of ORS Contact: Mr. Chad Campbell

Concise Statement of Facts/Complaint: * (This section must be completed. Attach additional information to this page if necessary.)

Daufuskie Island Utility Company (DIUC) required customers Halwig and Noller (46 and 36 Driftwood Cottage Lane, Daufuskie Island, Beaufort County, SC) to install replacement water and sewer mains that serve part of Driftwood Cottage Lane for the mains destroyed by Hurricane Matthew. All costs of engineering, permitting and installation were paid by these customers to the engineers and contractors and agencies for the replacement mains because DIUC refused to provide temporary or permanent replacement mains and maintained that replacement of its mains was these customers' responsibility. (See continuation, attached.)

Relief Requested: * (This section must be completed. Attach additional information to this page if necessary.)

The customers Halwig and Noller request the Commission require DIUC to immediately restore service through the replacement lines and to compel DIUC to refund the full costs paid by the customers for the replacement lines. (See continuation, attached.)

****I GIVE THE PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA PERMISSION TO PUBLISH THIS COMPLAINT AND ITS CONTENTS ON THE COMMISSION'S WEBSITE (dms.psc.sc.gov), AND I UNDERSTAND SUCH INFORMATION MAY BE SUBJECT TO PUBLIC SCRUTINY OR FURTHER RELEASE.** ☒ Yes ☐ No

STATE OF SOUTH CAROLINA)
COUNTY OF Charleston)

VERIFICATION

Complainant's Signature* (MUST BE SIGNED, DO NOT PRINT)

I, Mr./Mrs. Halwig and Mrs. Noller
Complainant's Name *

verify that I have read my complaint filed on

Date * 11/16/18

Internal Use Only

Processed By	Date
HJE	

and know the contents thereof, and that said contents are true.

Complainant's Signature* (MUST BE SIGNED, DO NOT PRINT)

J. MULLINS 11/16/18

Complete Form, Print, Sign and Mail to:
Public Service Commission of South Carolina
101 Executive Center Dr., Suite 100
Columbia, SC 29210



Phone: 803-896-5100

Fax: 803-896-5199

www.psc.sc.gov

Text PSCAGENDAS to 39492

To receive an alert when Meeting Agendas are released

Individual Complaint Form

Date*: 11/16/2018

Complainant or Legal Representative Information: * Required Fields

Name * Newman J. Smith

Firm (if applicable) Nelson Mullins Riley & Scarborough LLP

Mailing Address * 151 Meeting Street/PO Box 1806

City, State Zip * Charleston SC 29401 Phone * 843-534-4309

E-mail jack.smith@nelsonmullins.com

Name of Utility Involved in Complaint: * Daufuskie Island Utility Company

Type of Complaint (check appropriate box below.) *

- | | | | |
|--|--|--|--|
| <input type="checkbox"/> Billing Error/Adjustments | <input type="checkbox"/> Deposits and Credit Establishment | <input type="checkbox"/> Wrong Rate | <input checked="" type="checkbox"/> Refusal to Connect Service |
| <input type="checkbox"/> Disconnection of Service | <input type="checkbox"/> Payment Arrangements | <input type="checkbox"/> Water Quality | <input checked="" type="checkbox"/> Line Extension Issue |
| <input type="checkbox"/> Service Issue | <input type="checkbox"/> Meter Issue | | |
| <input type="checkbox"/> Other (be specific) | | | |

Have you contacted the Office of Regulatory Staff (ORS)? * ☒ Yes ☐ No Name of ORS Contact: Mr. Chad Campbell

Concise Statement of Facts/Complaint: * (This section must be completed. Attach additional information to this page if necessary.)

Daufuskie Island Utility Company (DIUC) required customers Halwig and Noller (46 and 36 Driftwood Cottage Lane, Daufuskie Island, Beaufort County, SC) to install replacement water and sewer mains that serve part of Driftwood Cottage Lane for the mains destroyed by Hurricane Matthew. All costs of engineering, permitting and installation were paid by these customers to the engineers and contractors and agencies for the replacement mains because DIUC refused to provide temporary or permanent replacement mains and maintained that replacement of its mains was these customers' responsibility. (See continuation, attached.)

Relief Requested: * (This section must be completed. Attach additional information to this page if necessary.)

The customers Halwig and Noller request the Commission require DIUC to immediately restore service through the replacement lines and to compel DIUC to refund the full costs paid by the customers for the replacement lines. (See continuation, attached.)

****I GIVE THE PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA PERMISSION TO PUBLISH THIS COMPLAINT AND ITS CONTENTS ON THE COMMISSION'S WEBSITE (dms.psc.sc.gov), AND I UNDERSTAND SUCH INFORMATION MAY BE SUBJECT TO PUBLIC SCRUTINY OR FURTHER RELEASE.** ☒ Yes ☐ No

Complainant's Signature* (MUST BE SIGNED, DO NOT PRINT)

STATE OF SOUTH CAROLINA)

COUNTY OF Charleston)

VERIFICATION

I, Mr./Mrs. Halwig and Mrs. Noller
Complainant's Name *

verify that I have read my complaint filed on

Date *

and know the contents thereof, and that said contents are true.

Complainant's Signature* (MUST BE SIGNED, DO NOT PRINT)

Internal Use Only

Processed By	Date
H.E.	

Complete Form, Print, Sign and Mail to:
Public Service Commission of South Carolina
101 Executive Center Dr., Suite 100
Columbia, SC 29210



Phone: 803-896-5100
Fax: 803-896-5199
www.psc.sc.gov
Text PSCAGENDAS to 39492

To receive an alert when Meeting Agendas are released

Individual Complaint Form

Date*: 11/16/2018

Complainant or Legal Representative Information:

* Required Fields

Name * Newman J. Smith

Firm (if applicable) Nelson Mullins Riley & Scarborough LLP

Mailing Address * 151 Meeting Street/PO Box 1806

City, State Zip * Charleston, SC 29401

Phone * 843-534-4309

E-mail jack.smtih@nelsonmullins.com

Name of Utility Involved in Complaint: * Daufuskie Island Utility Company

Type of Complaint (check appropriate box below.) *

- | | | | |
|--|--|--|--|
| <input type="checkbox"/> Billing Error/Adjustments | <input type="checkbox"/> Deposits and Credit Establishment | <input type="checkbox"/> Wrong Rate | <input checked="" type="checkbox"/> Refusal to Connect Service |
| <input type="checkbox"/> Disconnection of Service | <input type="checkbox"/> Payment Arrangements | <input type="checkbox"/> Water Quality | <input checked="" type="checkbox"/> Line Extension Issue |
| <input type="checkbox"/> Service Issue | <input type="checkbox"/> Meter Issue | | |
| <input type="checkbox"/> Other (be specific) _____ | | | |

Have you contacted the Office of Regulatory Staff (ORS)? * ☒ Yes ☐ No

Name of ORS Contact: Mr. Chad Campbell

Concise Statement of Facts/Complaint: * (This section must be completed. Attach additional information to this page if necessary.)

Daufuskie Island Utility Company (DIUC) required customers Halwig and Noller (46 and 36 Driftwood Cottage Lane, Daufuskie Island, Beaufort County, SC) to install replacement water and sewer mains that serve part of Driftwood Cottage Lane for the mains destroyed by Hurricane Matthew. All costs of engineering, permitting and installation were paid by these customers to the engineers and contractors and agencies for the replacement mains because DIUC refused to provide temporary or permanent replacement mains and maintained that replacement of its mains was these customers' responsibility. (See continuation, attached.)

Relief Requested: * (This section must be completed. Attach additional information to this page if necessary.)

The customers Halwig and Noller request the Commission require DIUC to immediately restore service through the replacement lines and to compel DIUC to refund the full costs paid by the customers for the replacement lines. (See continuation, attached.)

****I GIVE THE PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA PERMISSION TO PUBLISH THIS COMPLAINT AND ITS CONTENTS ON THE COMMISSION'S WEBSITE (dms.psc.sc.gov), AND I UNDERSTAND SUCH INFORMATION MAY BE SUBJECT TO PUBLIC SCRUTINY OR FURTHER RELEASE.** ☒ Yes ☐ No

Complainant's Signature* (MUST BE SIGNED, DO NOT PRINT)

STATE OF SOUTH CAROLINA)
COUNTY OF Charleston)

VERIFICATION

I, Mr./Mrs. Halwig and Mrs. Noller
Complainant's Name *

verify that I have read my complaint filed on

Date * 11/16/18

Internal Use Only

Processed By	Date
H.E.	

and know the contents thereof, and that said contents are true.

Complainant's Signature* (MUST BE SIGNED, DO NOT PRINT)

Continuation of Statement of Facts/Complaint

Daufuskie Island Utility Company (DIUC) has failed to provide adequate and proper service to its customers Halwig and Noller (46 and 36 Driftwood Cottage Lane, Daufuskie Island, Beaufort County, SC) since October of 2016. DIUC refused to replace water and sewer mains that serve part of Driftwood Cottage Lane since they were destroyed by Hurricane Matthew. DIUC also refused to replace the mains destroyed by the storm with alternative mains to serve the customers' homes. Instead, DIUC forced the Halwigs and Nollers to install replacement water and sewer mains for all lots on Driftwood Cottage Lane since they were destroyed by Hurricane Matthew with the promise that DIUC would restore water and sewer service once the mains were replaced. All costs of engineering, permitting and installation were paid by these customers to the engineers and contractors and agencies for the replacement mains because DIUC refused to provide temporary or permanent replacement mains and maintained that replacement of its mains was these customers' responsibility. Even though DIUC promised to restore service once the customers replaced the mains, DIUC has failed to do so and continues to refuse to provide adequate and proper service.

Plaintiffs are John and Nancy Halwig, the owners of 46 Driftwood Cottage Lane, Daufuskie Island, Beaufort County, South Carolina, and Beverly and Stephen Noller, the owners of 36 Driftwood Cottage Lane, Daufuskie Island, Beaufort County, South Carolina.

Plaintiffs' properties are within Melrose Plantation on Daufuskie Island. The Driftwood Cottage Lane area within Melrose has suffered from Hurricane Matthew which struck on October 8, 2016. As a result of the erosion from Hurricane Matthew, a portion of Driftwood Cottage Lane was washed out, and with it water and sewer mains owned by Daufuskie Island Utility Company. While the homes to the south of the washout on Driftwood Cottage Lane continued to have service from DIUC, the homes and lots north of the washout, particularly the homes of John and Nancy Halwig and Beverly and Stephen Noller, did not. When the utility company was asked when it would restore the utility service to these homes, the utility stated in a letter that it would not be able to restore service and that the two families on that street would have to provide an alternative extension of mains and utilities at their own, personal cost. When the Halwigs filed a Complaint with the South Carolina Office of Regulatory Staff ("ORS") regarding the refusal of DIUC to restore service, the ORS replied that the statutes do not provide a definitive time frame within which service has to be restored.¹ Based on this response, DIUC opted not to replace the mains or restore service at all.

Because DIUC refused to replace the mains and utilities, the Halwigs and Nollers were required to find an alternate route for mains to replace the one disconnected at the washout of Driftwood Cottage Lane to the remainder of the mains under Driftwood Cottage Lane. Several other lots in addition to these two developed lots exist and could utilize the mains. Because the Driftwood Cottage Lane neighborhood is adjacent to two holes of the Melrose Golf Course and a road across the golf course called Martinangel Lane, which did have utility mains under it, the logical

¹ See letter from ORS to Dr. Halwig dated December 2, 2016, ORS file # 2016-W-1682.

Public Service Commission of South Carolina, Halwig and Noller Complaint
RE: Daufuskie Island Utility Commission filed November 16, 2018
Page 2

place to seek alternative routing for replacement mains to Driftwood Cottage Lane would be through the golf course property. The golf course property, owned by the Melrose Resort owner, was in the process of going through bankruptcy. In spite of this, the Halwigs and Nollers persevered and eventually were able to get the former lender and now owner of the Melrose Golf Course to agree to the easement to allow the lines to be installed near the 17th hole of the golf course. The process of obtaining the easement took more than a year, and throughout that time, the Halwigs and Nollers remained without water and sewer services at their properties. DIUC did not assist in finding the alternate route for the mains or in securing the necessary easement for installation.

Once the Halwigs and Nollers obtained the easement, the water and sewer mains could be installed through the golf course property. On January 30, 2018, DIUC provided the Halwigs and the Nollers with a Customer Service Agreement, which detailed the terms under which DIUC would provide service to the Halwigs and the Nollers. The Customer Service Agreement provides that the Halwigs and Nollers were to install the mains at their own expense. The Customer Service Agreement required the Halwigs and the Nollers to provide DIUC with the easement, invoices related to the costs that they were incurring at their own expense, and "as built" drawings prepared by a licensed surveyor. The Customer Service Agreement also provides that the Halwigs and Nollers will provide DIUC with a bill of sale transferring ownership of the mains to DIUC upon completion. The Customer Service Agreement provides that:

Under the circumstances of the need for this agreement, there will be no charge for administrative fees. Upon execution of this agreement and compliance with its provisions, service will be connected to Customers premises.

The installation of the replacement mains was finally completed and accepted by the engineer at the end of September 2018. All of the engineering costs, agency permitting, installation and other costs involved in replacing the water and sewer mains was paid for by the Halwigs and Nollers. Every item of paperwork required by DIUC has been delivered to DIUC. DIUC has accepted the installation and the Bill of Sale transferring ownership of the replacement mains to DIUC. The DHEC permit is now DIUC's responsibility. The project engineer has accepted the completion of the work as of September 28, 2018. At no time did DIUC offer any assistance and only provided the name of their preferred engineering firm.

Despite the fact that the Halwigs and the Nollers executed the Customer Service Agreement and complied with its terms, DIUC still refuses to provide service to the Halwigs' and Nollers' properties as it agreed to do so under the Customer Service Agreement. DIUC would not allow service to be restored even temporarily at that time for testing to make sure that it was properly connected to the homes. As of the date of this filing, service has not yet been restored to the Halwigs' and Nollers' homes.

Instead of complying with the Customer Service Agreement, DIUC has provided the Halwigs and the Nollers with an Addendum to the Customer Service Agreement, in which DIUC has

Public Service Commission of South Carolina, Halwig and Noller Complaint
 RE: Daufuskie Island Utility Commission filed November 16, 2018
 Page 3

demanded (1) payment of additional expenses never mentioned in the Customer Service Agreement, including its attorney's fees and taxes expected to be imposed on DIUC for the costs paid for by the Halwigs and Nollers for the replacement mains; and (2) a withdrawal and release of any and all claims and complaints the Halwigs and Nollers have asserted or may assert against DIUC before PSC or otherwise in regard to the installation of the Project Mains. DIUC has demanded execution of this Addendum prior to providing water and sewer service to the Halwigs' and Nollers' homes. Copies of the Customer Service Agreement and proposed Addendum to the Customer Service Agreement are attached with the correspondence referred to in this Complaint. Copies of the documentation for the engineering services provided by Thomas and Hutton, the contractor services provided by PINCO Construction, permitting by DHEC, and cost of equipment are available if requested.

The terms of the Customer Service Agreement between the Halwigs and Nollers and DIUC does not require that the Halwigs and Nollers pay any attorney fees or taxes that might be due and payable in the future by DIUC based upon the cost of installation of the replacement lines necessary for DIUC to provide service to the Halwigs and Nollers. The Agreement is clear that "[u]nder the circumstances of the need for this agreement, there will be no charge for administrative fees." (Agreement, Page 2). Taxes and attorney fees would be administrative fees. Legal fees are typical operating expenses and not included in the cost of Contributions in Aid of Construction or Customer Main Extension Fees.

While the Agreement does state that "in order to protect other customers from sharing in the cost responsibility, it would be the responsibility of the affected Customers to **have the Project Mains installed** in accordance with the plans they solicited from Thomas & Hutton, **at their cost**" (emphasis added), the cost of installation does not include any ancillary costs incurred by DIUC, and certainly no speculative costs. Moreover, the setting of rates is not a DIUC decision and can only be set by the SC Public Service Commission, or potentially a court decision. The sharing by customers of all costs of DIUC for the facilities, services and related costs (such as taxes) is a decision of the PSC. The Halwigs and Nollers did not agree to pay a potential liability of DIUC, especially without notice, discussion or mention in the Agreement.

The Halwigs and the Nollers should never have had to pay for the replacement of the Mains, much less for the potential taxes and attorney fees of DIUC related to such replacement. Lines destroyed by a sinkhole, flood or other natural causes should not be the responsibility of the customers affected by the loss. DIUC has the following responsibility under the PSC regulations:

. . . unless specifically relieved in any case by the commission from such obligation, shall operate and maintain in safe, efficient and proper conditions all of its facilities and equipment used in connection with the services it provides to any customer up to and including the point of delivery into systems or facilities owned by the customer.

See R.103-540 and 740. When it is not possible to replace the infrastructure lost in the same place, the utility should not simply be relieved from replacing the infrastructure in another place.

The PSC cannot allow a utility to shift the burden of water and sewer infrastructure replacement to those whose service was lost through damage to the infrastructure of the utility. Repairing damage and replacing systems as necessary is part of running a utility business. Good business practice, especially when profit is built in by the rate structure approved by a government authority, must include funds for replacement of the critical infrastructure necessary to maintain homes in a habitable condition. The costs demanded here are not for any installation at these individual customers houses, that cost was excluded by DIUC in calculating the cost to then tax and in determining what it would accept responsibility for maintaining. These customers have been forced to pay for replacement mains that are DIUC's responsibility.

Despite the language of the Agreement stating that there will be "no charge for administrative fees," DIUC continues to demand, prior to restoration of service, payment of an estimated tax it may bear on the amount paid by the customers for the replacement system DIUC refused to replace. The future imposition of a federal tax on the cost paid for installation is not a cost under a Customer Main Extension Fee (R.103-502.3). The Public Service Commission has not yet held a hearing or made a final decision regarding the amount of a tax or how any tax that may be due under such a situation would be handled in setting future rates.² The imposition of the full tax amount expected based solely on the cost of installation also does not account for the potential deductible loss of the system being replaced, depreciation or other factors in determining tax liability.

DIUC has argued that the requirement to Preserve Tax Benefits in the referenced Docket should be in a future rate relief proceeding.³ However, the mains installed by the Halwigs and the Nollers are replacements for the mains that were destroyed by the storm. They are not new lines and should not be treated like a contribution to the utility like new lines. The treatment of the "income" from the payments made by these customers cannot be compared to voluntary contributions in aid of construction or a customer main extension fee. The refusal of DIUC to replace the lines or make any effort to provide even temporary service made the payment by these customers involuntary; without replacing the system themselves the homes they built could not be used and could be condemned. These customers being forced to pay for the replacement mains should not be allowed, the replacement is DIUC's responsibility. Most importantly as set for the above, the Agreement does not include DIUC costs of any kind be paid by these customers, only the cost of installation.

Further, it would be inappropriate to charge the Halwigs and the Nollers a tax or attorney fees for the replacement of lines that serve all of the lots along Driftwood Cottage Lane above the area where erosion destroyed the road. The replacement mains connect from Martinangel Lane to the lines under Driftwood and not directly to these customers' homes. The replacement Mains only connect one street to the next. The only equipment installed onto the Halwigs' or Nollers' property were the grinder pumps. These pumps had to be replaced in order to manage the change

² PSC Docket #2017-381-A.

³ PSC Docket #2017-381-A: October 10, 2018 Supplemental Filing. "DIUC requests the Commission find that all effects of the Tax Act on DIUC's allowable expenses and revenues may be determined only in the context of a rate relief proceeding during which all revenues and expenses are to be considered in setting a just and reasonable rate." (at page 4).

Public Service Commission of South Carolina, Halwig and Noller Complaint
RE: Daufuskie Island Utility Commission filed November 16, 2018
Page 5

in water flow to the replacement lines. DIUC has identified the grinder pumps as the exclusive responsibility of the owners and has excluded grinder pumps from the equipment transferred to DIUC. DIUC has accepted responsibility for the operation and maintenance of the replacement mains, which provide service to all of the lots along Driftwood Cottage Lane above the wash out.

The refusal to turn on the water and sewer service at the Halwigs' and Nollers' homes after completion of the permitting and installation of the replacement lines is not reasonable and shows a lack of good faith on the part of DIUC. All requirements under the Agreement have been met and satisfied. No further amounts are due and payable to DIUC under the Agreement. The only items allegedly in dispute from DIUC's perspective are its attorney's fees and as yet not due potential tax liability.⁴ In addition, DIUC has demanded in the Addendum to the Customer Service Agreement that the Halwigs and Nollers provide a withdrawal and release of any and all claims and complaints the Halwigs and Nollers have asserted or may assert against DIUC before PSC or otherwise in regard to the installation of the Project Mains. These new demands are not reasonable and would require the customers to relinquish significant rights in exchange for service that DIUC already has an obligation to provide. There is no regulatory requirement for the notion behind DIUC's position throughout the two (2) year plus lack of service that "it is not appropriate for the Company to incur such costs which would then be passed on to its other customers through the rate setting process."⁵ The decision to 'pass on' any costs is a decision for the PSC and not DIUC, is not certain, and, under the circumstances, fails to support the demands made on DIUC's own customers, especially when all costs of installation have been paid by the Halwigs and the Nollers, who have no recourse to other water providers. Significantly as well, these customers had no choice but to pay for replacement lines because DIUC forced them to choose to do that or lose their beachfront homes. These customers are still without service.

These customers' homes have been without water and sewer service for over two years, and the lack of service has caused a great deal of loss to both families. DIUC's refusal to provide service continues in the face of installation of replacement mains by the customers at the customers' own cost and every item of paperwork required by DIUC having been delivered to DIUC, which has accepted the installation, including the Bill of Sale for the replaced system from the Halwigs and Nollers. DIUC has still refused to return service to these homes, based on the demand for payment of the attorney's fees and potential tax liability and release of any claims against DIUC. Such refusal to restore service after the fulfillment of the Agreement by the Halwigs and Nollers violates the DIUC commitment made to them in December of 2015: "Daufuskie Island Utility Company (Company) will continue to preserve, maintain and provide service to all customers within its service area, including service to the Halwig property.we will continue to provide utility service as originally designed and in compliance with all regulatory requirements." The water and sewer service has not been restored in order for these families to be able to use their properties, and DIUC has failed to live up to its responsibilities.

⁴ It is possible the Tax Act triggering the potential new tax will be amended before any such tax is due.

⁵ December 10, 2015 DIUC correspondence to Halwig counsel.

Continuation of Relief Requested

The PSC should require that DIUC restore water and sewer service to its customers Halwig and Noller immediately and that DIUC reimburse the Halwigs and the Nollers for all costs paid to replace the mains serving the portion of Driftwood Cottage Lane above the road wash out for and such other and further relief as the PSC may deem just and proper.

Daufuskie Island Utility Company, Inc.

725 N. Hwy A1A, Suite B103, Jupiter, FL 33477
888-635-7878

BY EMAIL

January 30, 2018

Ms. Bev Noller
36 Driftwood Cottage Ln
Daufuskie Island, SC 29915

Dr. Michael Halwig
46 Driftwood Cottage Ln
Daufuskie Island, SC 29915

RE: Customer Service Agreement for Customers located at
36 & 46 Driftwood Cottage Lane

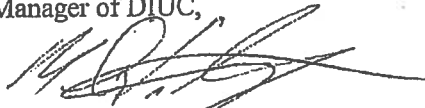
This Customer Agreement is necessary because of severe and continuous storm and tidal ocean erosion that destroyed the section of road located between 22 and 33 Driftwood Cottage Ln, containing Daufuskie Island Utility Company's ("DIUC") water and sewer facilities. Because these facilities could not be replaced as originally designed, DIUC is unable to provide service to customers located at 36 & 46 Driftwood Cottage Ln ("Customers"). As an alternative, DIUC provided Customers with a "Letter of Intent" to serve the customers by connecting to existing mains along Martinangel Ln. and install new mains and facilities ("Project Mains") through the Melrose Golf course to the Customers premises.

DIUC will serve Customers under the following terms of this agreement:

1. In order to protect other customers from sharing in the cost responsibility, it would be the responsibility of the affected Customers to have the Project Mains installed in accordance with the plans they solicited from Thomas & Hutton, at their cost.
2. The installation of the Project Mains must comply with all applicable laws, ordinances, rules, regulations and lawful orders of governmental authorities, and approved by DIUC.
3. Customers will provide DIUC with the following documents: written approval by the owners of the Melrose golf course for the Project Mains installation; easements of sufficient width for the perpetual access to repair, replace and maintain the Project Mains, invoices pertaining to all costs incurred including but not limited to, engineering, permitting and construction.
4. Upon completion of the Project Mains installation, Customers must submit detailed "as built" drawings prepared by a licensed surveyor.
5. Upon Completion of the Project Main, Customers will provide DIUC with an acknowledged bill of sale transferring them to DIUC, and they shall be and remain the property of DIUC and its heirs and successors, and will be treated as contributed for rate setting purposes.
6. The Customers shall not for any reason be entitled to any refunds with respect to the Project Mains or any future extension or use of those facilities.

Under the circumstances of the need for this agreement, there will be no charge for administrative fees. Upon execution of this agreement and compliance with its provisions, service will be connected to Customers premises.

GUASTELLA ASSOCIATES, LLC
Manager of DIUC,



Mike J. Guastella
Vice President- Operations



Ms. Bev Noller

Dr. Michael Halwig

Cc: Willie Morgan
Chad Campbell

054041/09000

Daufuskie Island Utility Company, Inc.

725 N. Hwy A1A, Suite B103, Jupiter, FL 33477
888-635-7878

BY
EMAIL

January 30, 2018

Ms. Bev Noller
36 Driftwood Cottage Ln
Daufuskie Island, SC 29915

Dr. Michael Halwig
46 Driftwood Cottage Ln
Daufuskie Island, SC 29915

RECEIVED

FEB 07 2018

NELSON, MULLINS

RE: Customer Service Agreement for Customers located at
36 & 46 Driftwood Cottage Lane

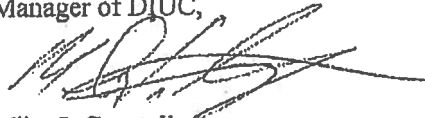
This Customer Agreement is necessary because of severe and continuous storm and tidal ocean erosion that destroyed the section of road located between 22 and 33 Driftwood Cottage Ln, containing Daufuskie Island Utility Company's ("DIUC") water and sewer facilities. Because these facilities could not be replaced as originally designed, DIUC is unable to provide service to customers located at 36 & 46 Driftwood Cottage Ln ("Customers"). As an alternative, DIUC provided Customers with a "Letter of Intent" to serve the customers by connecting to existing mains along Martinangel Ln. and install new mains and facilities ("Project Mains") through the Melrose Golf course to the Customers premises.

DIUC will serve Customers under the following terms of this agreement:

1. In order to protect other customers from sharing in the cost responsibility, it would be the responsibility of the affected Customers to have the Project Mains installed in accordance with the plans they solicited from Thomas & Hutton, at their cost.
2. The installation of the Project Mains must comply with all applicable laws, ordinances, rules, regulations and lawful orders of governmental authorities, and approved by DIUC.
3. Customers will provide DIUC with the following documents: written approval by the owners of the Melrose golf course for the Project Mains installation; easements of sufficient width for the perpetual access to repair, replace and maintain the Project Mains, invoices pertaining to all costs incurred including but not limited to, engineering, permitting and construction.
4. Upon completion of the Project Mains installation, Customers must submit detailed "as built" drawings prepared by a licensed surveyor.
5. Upon completion of the Project Main, Customers will provide DIUC with an acknowledged bill of sale transferring them to DIUC, and they shall be and remain the property of DIUC and its heirs and successors, and will be treated as contributed for rate setting purposes.
6. The Customers shall not for any reason be entitled to any refunds with respect to the Project Mains or any future extension or use of those facilities.

Under the circumstances of the need for this agreement there will be no charge for administrative fees. Upon execution of this agreement and compliance with its provisions, service will be connected to Customers premises.

GUASTELLA ASSOCIATES, LLC
Manager of DIUC,



Mike J. Guastella
Vice President- Operations

G---:p--~
Ms. Bev NOH

Michael Haiwig 2/1/18
Dr. Michael Haiwig

Cc: Willie Morgan
Chad Campbell

ADDENDUM TO CUSTOMER SERVICE AGREEMENT

WHEREAS, Michael Halwig, Nancy Halwig, Beverly Noller and Stephen Noller (together the “Customers”) and Daufuskie Island Utility Company, Inc. (“DIUC”) entered into a Customer Service Agreement (“CSA”) (copy attached hereto as **Exhibit A**);

WHEREAS, pursuant to the CSA, the Customers caused to be installed certain water mains and facilities (“Project Mains” as referenced in the CSA);

WHEREAS, the Project Mains includes the Curb Stops and Meters installed by DIUC but does not include any items located on the premises owned by the Customers (the Premises”);

WHEREAS, the Customers represent to the best of their knowledge that the Project Mains comply with all applicable laws, ordinances, rules, regulations and lawful orders of governmental authorities;

WHEREAS, the Customers have provided DIUC with an acknowledged bill of sale transferring the Project Mains to DIUC (copy attached hereto as **Exhibit B**);

WHEREAS, the Customers and DIUC wish to enter into this Addendum to the CSA in order to clarify the obligations between them pursuant to the CSA and to resolve all issues between them so as to avoid the costs of and delays associated with having disputed issues resolved by litigation, mediation, arbitration, or other complaint procedures or processes;

WHEREAS, the Drawings of Record/As-Built Drawings (copy attached hereto as **Exhibit C**), depict the newly installed Project Mains to be owned, operated, and maintained by DIUC and also depict certain items located on the Customers’ property which will remain the property of and responsibility of the Customers;

WHEREAS, pursuant to NARUC prescribed Uniform System of Accounts, when DIUC incorporates the Project Mains into its system it will book the cost of the Project Mains as

Contributions In Aid Of Construction;

WHEREAS, pursuant to the recent Tax Cuts and Jobs Act, DIUC will incur a tax liability at a rate of \$33.24 for every \$100.00 of the amount booked as Contributions In Aid Of Construction;

WHEREAS, pursuant to Paragraph 3 of the CSA, the Customers have provided invoices (copies attached hereto as **Exhibit D**) for costs associated with the Project Mains as follows:

PINCO	\$ 69,337.72 ¹
Thomas and Hutton	\$ 39,346.35
Joe Davis	\$ 2,650.00
Sea Island Land Survey	\$ 1,300.00
SC DHEC	\$ 250.00
Transportation Costs	\$ <u>70.00</u>
TOTAL	\$ 112,954.07

WHEREAS, DIUC has provided the Owners with a statement from its legal counsel (copy attached hereto as **Exhibit E**)² indicating that DIUC has incurred legal costs of \$3,900.00 related to the matters contained in the CSA;

WHEREAS, DIUC has provided the Owners with a statement (copy attached hereto as **Exhibit F**) indicating that DIUC incurred ferry transportation costs of \$70.00 for the Customers' engineer Fred Sororian; and

WHEREAS, as a result of incorporating the Project Mains into its utility plant in service, DIUC will incur a tax obligation of \$37,545.93, which is equal to 33.24% of \$112,954.07.

THEREFORE, in order to resolve all questions as to the obligations of the Owners and DIUC pursuant to the CSA, the Owners and DIUC agree:

¹ Supplemental Schedule from Pinco totaling \$76,487.72 less \$7,150.00 for Items 6 and 7 which will remain the property and responsibility of the Customers.

² The Customers and DIUC agree that production of the invoice does not constitute a waiver of any work product protections or the attorney-client privilege.

1. The Customers shall pay to DIUC \$3,900.00 for legal costs and \$37,545.93 for taxes incurred. Said payment shall be made by cashiers check payable to Daufuskie Island Utility Company, Inc. and delivered to: Thomas P. Gressette, Jr., Esq., Walker Gressette Freeman & Linton, LLC, 66 Hasell Street, Charleston, SC 29401.

2. The Customers will withdraw and release any and all claims and complaints they have asserted or may assert against DIUC in regard to the installation of the Project Mains, including but not limited to, those issues raised by letter from Newman Jackson Smith, Esq. to Chad Campbell dated September 11, 2018 (copy attached hereto as **Exhibit G**).

IT IS SO AGREED THIS _____ DAY OF OCTOBER, 2018.

Witness

Stephen A. Noller

Date: _____

Witness

Beverly P. Noller

Date: _____

Witness

John M. Halwig

Date: _____

Witness

Nancy D. Halwig

Date: _____

Daufuskie Island Utility Co., Inc.

Witness

Signed: _____

Printed Name: _____

Title: _____

Date: _____